

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

[7] DIEGO F. IDROBO-VICTORIA,

Defendant.

CRIMINAL NO. 20-451 (SCC)(HRV)

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Pending before the Court are two motions filed by *pro se* defendant Diego F. Idrobo-Victoria (hereinafter “Mr. Idrobo”) seeking a reduction of his sentence (compassionate release) pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). (Docket Nos. 197 and 216). These motions, which are identical, have been referred to me for report and recommendation. For the reasons outlined below, I recommend that they be DENIED.

Background

On December 21, 2020, a grand jury sitting in this district returned an Indictment against Mr. Idrobo charging him in two counts. (Docket No. 3). Count One charged an international conspiracy to distribute controlled substances in violation of 21 U.S.C. §§ 959, 960 and 963. Defendant was also named in Count Three which charged Idrobo and others with international distribution of heroin, a violation of 21 U.S.C. § 959(a) and 960(b)(3). On August 29, 2022, Mr. Idrobo pleaded guilty to Count One of the Indictment pursuant to a plea agreement. (Docket Nos. 133, 135).

1 The Court sentenced Mr. Idrobo on January 10, 2023, to a term of imprisonment
2 of 37 months, to be followed by three (3) years of supervised release. (Docket Nos. 163,
3 164). Subsequently, the Court reduced defendant's sentence to 30 months under
4 retroactive amendment 821. (Docket Nos. 236, 237). He is currently housed at the FCI
5 Coleman Low facility of the Bureau of Prisons ("BOP"), with an estimated release date of
6 February 19, 2025.
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8 On August 7, 2023, Mr. Idrobo filed his original motion for compassionate release.
9 (Docket No. 197). The motion makes some legal arguments that are difficult to follow
10 regarding the legality of his conviction and sentence. The motion also alleges that
11 "[d]efendant's parents are elderly, and in need of defendant's daily assistances due to
12 their medical conditions." (Docket No. 197 at 4). Mr. Idrobo attaches medical records
13 from Colombia in the Spanish language detailing the medical conditions of his parents.
14 (Docket No. 197-2). On December 15, 2023, defendant filed a "renewed" motion for
15 compassionate release. This motion is word-by-word identical to the one filed at Docket
16 No. 197.
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19 The government has not responded to either motion. The presiding District Judge
20 referred the matter to me for report and recommendation on April 18, 2024. (Docket No.
21 244).
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23 ***Applicable Law and Discussion***

24 Mr. Idrobo first claims that the judgment (I assume the sentence he received)
25 exceeds any possible harm or "injury" caused to the United States by his criminal conduct.
26 He argues that he has "a justifiable grievance against the judgment, which under the 1st
27 [sic] amendment rights protections, entitles him to a corrected—and reduced—sentence."
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(Docket No. 197 at 3). These are awkwardly phrased and inapplicable justiciability arguments. For instance, Mr. Idrobo includes terms such as “redressability,” “cases and controversies,” and “Article III standing.” Further, the motion talks about “newly uncovered facts” and contends that “[t]he United States failed to proffer any concrete factual evidence of Defendant’s legislative violation(s).” (Docket No. 197 at 4).

I will not try to decipher the above arguments because in the end, the defendant lists the following seven reasons why his sentence should be reduced: (1) he is Colombian; (2) his parents are in Colombia in need of his assistance with respect to their medical conditions; (3) the length of imprisonment received is excessive considering the crime was an “attempt”; (4) his return to Colombia complies with some unknown policy for reuniting immigrants with their families; (5) his return to Colombia aligns with the purpose and goals of the First Step Act of 2018; (6) his release and return to Colombia will free up bed space at the BOP; and (7) he can be banned from returning to the United States. (*Id.* at 5). In sum, Mr. Idrobo argues that he “has presented sufficient facts showing his sentence of imprisonment is in need of a reduction in sentence to ‘time served’ and his immediate deportation back to Colombia, [so] that he may take care of his parents in their later-stages in life.” (*Id.* at 6.)

The so-called compassionate release statute allows a court acting on a defendant-filed motion—as long as such reduction is consistent “with applicable policy statements issued by the Sentencing Commission”—to

reduce the term of imprisonment (and... impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds

1 that—(i) extraordinary and compelling reasons warrant such
2 a reduction

3 18 U.S.C. § 3582(c)(1)(A)(i).¹ This statute is one of the very few exceptions to the rule
4 that once imposed, a term of imprisonment shall not be modified. *United States v.*
5 *Saccoccia*, 10 F.4th 1, 3 (1st Cir. 2021).

6 To obtain compassionate release, a defendant must establish these three things:
7 (1) that extraordinary and compelling reasons warrant a sentence reduction; (2) that the
8 reduction is consistent with the applicable policy statements issued by the Sentencing
9 Commission; and (3) that relief is appropriate under the circumstances of the case after
10 considering the applicable 18 U.S.C. § 3553(a) factors. *See United States v. Quiros-*
11 *Morales*, 83 F.4th 79, 84 (1st Cir. 2023).

13 With respect to the first prong—whether the reasons advanced by the defendant
14 are extraordinary and compelling—the determination is “guided by the plain meaning of
15 those terms.” *United States v. Canales-Ramos*, 19 F.4th 561, 566 (1st Cir. 2021). “The
16 plain meaning of ‘extraordinary’ suggests that a qualifying reason must be a reason that
17 is beyond the mine-run either in fact or in degree By the same token, the plain
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23 ¹ The statute also requires exhaustion of administrative remedies. 18 U.S.C. § 3582(c)(1)(A). Mr. Idrobo submitted
24 an attachment to the original motion consisting of an email in which he is requesting from the warden of
25 his facility that a compassionate release motion be filed on his behalf. (Docket No. 197-1). There is no
26 evidence that the warden ever responded or that Mr. Idrobo exhausted remedies. Notwithstanding, the
27 exhaustion requirement in 18 U.S.C. § 3582(c) is not a jurisdictional bar; rather, it is a mandatory claim
28 processing rule. *See United States v. Teixeira-Nieves*, 23 F.4th 48, 53 (1st Cir. 2022)(“In our judgment . . .
[the] exhaustion requirement is not a jurisdictional limitation . . .”). As such, the government can waive
it “either expressly or by failing to raise it as a defense.” *United States v. Newton*, No. 17-cr-0073-JAW,
2023 WL 8529442; 2023 U.S. Dist. LEXIS 218588 (D. Me. Dec. 8, 2023)(citations omitted). By not
responding to defendant’s compassionate release motions, the government has waived any failure to
exhaust argument.

1 meaning of ‘compelling’ suggests that a qualifying reason must be a reason that is both
2 powerful and convincing.” *Id.* (citations omitted).

3 Prior to November 1, 2023, and because the Sentencing Commission had not
4 issued an amended policy statement applicable to prisoner-initiated compassionate
5 release motions, the First Circuit held that district courts had discretion to “consider any
6 complex of circumstances raised by a defendant, as forming an extraordinary and
7 compelling reason warranting relief.” *United States v. Ruvalcaba*, 26 F.4th 14, 28 (1st
8 Cir. 2022). Subsequently, in *United States v. Trenkler*, 47 F.4th 42, 47-48 (1st Cir. 2022),
9 it was clarified that pursuant to the holding in *Ruvalcaba*, district courts “may conduct
10 a holistic review to determine whether the individualized circumstances [of the
11 defendant], taken in the aggregate, present an ‘extraordinary and compelling’ reason to
12 grant compassionate release,” including alleged sentencing errors.

13 The Sentencing Commission’s policy statement regarding defendant-filed
14 motions for compassionate release is now in effect. *See* U.S.S.G. § 1B1.13 (Nov. 1, 2023).
15 Consequently, the court “must take heed of” the policy statement as noted in *United*
16 *States v. Rivera-Rodriguez*, 75 F.4th 1, 18 n.22 (1st Cir. 2023), and consider its scope in
17 deciding what constitutes an extraordinary and compelling reason. *United States v.*
18 *Quiros-Morales*, 83 F.4th at 84.

19 In the amended policy statement, the Sentencing Commission has identified six
20 circumstances that individually or in combination may provide extraordinary and
21 compelling reasons for a reduction in sentence. U.S.S.G. § 1B1.13(b). These are: certain
22 medical circumstances such as a terminal illness or inability to receive medical care while
23 incarcerated, *id.*, § 1B1.13(b)(1); the defendant’s age, *id.* § 1B1.13(b)(2); the defendant’s
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1 family circumstances, *id.* § 1B1.13(b)(3); the defendant having been the victim of sexual
2 or physical abuse by or at the direction of a correctional officer, *id.* § 1B1.13(b)(4); a catch-
3 all provision of any other reason or combination of reasons similar in gravity to those
4 described in (1) through (4), *id.* § 1B.13(b)(5); and if the defendant received an unusually
5 long sentence, *id.* § 1B1.13(b)(6).

7 After careful consideration, I find that Mr. Idrobo has not established the
8 existence of extraordinary and compelling reasons to warrant a reduction of his sentence.
9 Of the reasons adduced, the only one that remotely resembles a claim that could be
10 cognizable under the applicable statute and legal framework is the argument about
11 defendant's family circumstances. He contends that his parents are elderly and submits
12 medical records that demonstrate they are receiving medical treatment for several
13 conditions, including cancer (his father). Unfortunately, without more, this reason does
14 not rise to the level of extraordinary and compelling under the amended policy statement
15 of the Sentencing Commission.

17 With respect to family circumstances, the policy statement provides that
18 extraordinary and compelling reasons exist, for instance, when the parent of the
19 defendant is incapacitated and "the defendant would be the only available caregiver for
20 the parent." U.S.S.G. § 1B1.13(b)(3)(C). Some of the medical records provided are a year
21 old or older, and they do not clearly establish the severity, status, or prognosis of the
22 medical conditions. Certainly, the records do not establish that either of the defendant's
23 parents are incapacitated. Even if I was inclined to find that defendant's parents medical
24 conditions were severe enough to be incapacitating, the lack of evidence to demonstrate
25 that Mr. Idrobo is the only available caregiver for them is dispositive. *See United States*

1 *v. Mackenzie*, 458 F. Supp. 3d 53, 55 (D. Mass. 2020)(no extraordinary and compelling
2 reasons existed because there was no indication that defendant was the only available
3 caretaker of his grandson); *see also United States v. Taveras*, No. 19—cr-40049-MGR-
4 5, ___ F. Supp. 3d ___, 2024 WL 1606013, 2024 U.S. Dist. LEXIS 67198 at *13-14 (D.
5 Mass Apr. 12, 2024)(denying compassionate release because even if the medical
6 conditions of defendant’s mother rendered her incapacitated, defendant was not her only
7 available caregiver.); *United States v. Rodriguez-Soler*, Criminal No. 10-64 (MAJ)(BJM),
8 2024 WL 1596853, 2024 U.S. Dist. LEXIS 70289 at *18 (D.P.R. Apr. 12, 2024)(the policy
9 statement requires that the defendant be the only available caregiver and there was no
10 indication that defendant’s wife could not care for herself or his three children). The
11 record reveals that the defendant has two siblings that live in Cali, Colombia, the same
12 city where his parents live. (Pre-sentence Investigation Report, Docket No. 143 at 10-11).
13 There is nothing submitted to show that Mr. Idrobo’s siblings cannot care for their
14 parents.
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18 Lastly, the applicable section 3553(a) factors counsel against a further reduction
19 in sentence. I say further because the defendant’s sentence has already been reduced
20 under amendment 821. (Docket No. 237) Mr. Idrobo’s offense of conviction involves
21 international drug-trafficking, a very serious offense. Therefore, a reduction of sentence
22 to time-served after he has served only 16 months of a 30-month sentence would be
23 inconsistent with the need to provide just punishment, the need to protect the public,
24 and the need to promote deterrence and respect for the law. *See United States v.*
25 *Martinez*, No. 2:18-cr-00089-JAW, 2023 WL 3305674, 2023 U.S. Dist. LEXIS 79444 at
26 *29 (D. Me. May 8, 2023).
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